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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,307	07/02/2003	Mark G. Meyer	29757/P-829	4054
49358	7590	06/29/2005	EXAMINER	
CARLTON FIELDS, PA 1201 WEST PEACHTREE STREET 3000 ONE ATLANTIC CENTER ATLANTA, GA 30309			MOSSER, ROBERT E	
			ART UNIT	PAPER NUMBER
			3714	

DATE MAILED: 06/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/612,307

Applicant(s)

MEYER ET AL.

Examiner

Robert Mosser

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/18/05, 10/6/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Information Disclosure Statement*

The information disclosure statements dated April 18<sup>th</sup>, 2005 and October 6<sup>th</sup>, 2003 have been considered and are attached hereto.

### *Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims **1-12, 14-16, and 18-42** are rejected under 35 U.S.C. 103(a) as being unpatentable over [www.Powerball.com](http://www.Powerball.com) in view of Walker et al (US 6,497,408).

Regarding claims **1-4, 35, 36, 38, 41** Powerball teaches receiving a plurality of player symbol selections from a plurality of numerical possibilities (*Powerball* Page 3), presenting the player with a ticket identifying the player symbol selections in response to the placing of a wager by the player (*Powerball* Page 3 "purchase a ticket"), selecting

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a plurality of winning symbol selections from said plurality of numerical possibilities and awarding a prize dependent on the number of corresponding player symbol selections and winning symbol selections (*Powerball* Page 3 & Page 1 "Powerball prizes and Odds"), and notifying the player of information related to the payout (*Powerball* Page 3 Paragraph 1).

The claimed multidimensional lookup table based on the respective number of symbols in each set of player symbols is shown on the top of the first page of *Powerball*. Said table also demonstrates that some of the value payouts (i.e. two matched numbers plus the powerball has a \$7 associated prize) are less than the sum of the individual payouts (i.e. two distinct matched occurrences of a single number with the occurrence of a powerball has  $2 \times \$4 = \$8$  prize). While also demonstrating that a portion of the value payouts (i.e. four matched numbers plus the powerball has a \$5,000 associated prize) are greater than the sum of the individual payouts (i.e. an occurrence of four matched number and the separate occurrence of a powerball has a  $\$100 + \$3 = \$103$  prize). *Powerball* is silent regarding the inclusion of multiple player sets, however in a related publication Walker teaches the purchase of multiple sets of numbers (player symbols) for a lottery (Walker Col 1:35-41). It would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the ability to purchase multiple sets of numbers as taught by Walker into the teachings of *Powerball* in order to allow an individual multiple chances to win in a game.

Regarding claims **5** and **10**, Powerball teaches calculating a payout for each set/entry hence constituting a base payout comprising the sum of individual payouts as so claimed.

Regarding claims **6-8** and **18-19**, Powerball/Walker teaches player purchasing of multiple sets (tickets) and as such they would implicitly have winning symbols capable of overlapping multiple sets in only a single occurrence of said winning symbol in addition to the awarding of the greatest available prize when multiple prizes are won. In this instance for an individual playing Keno and placing two separate wagers on a single selection of the same number the base game prize and the prize as determined through the summation of winning symbols will be the same amount.

Regarding claims **9**, Powerball teaches the awarding of a maximum individual payout per set through only awarding the highest paying combination as shown on the top of the first page of *Powerball*.

Regarding claims **11-12**, Powerball teaches a fixed player and winning set size and hence a fixed set size for multiple sets as so claimed (*Powerball* Page 3 First full paragraph).

Regarding claims **14-16**, Powerball/Walker teach the association of a fixed ticket price with each player set as such the limiting in number of player sets is implicitly determined based on the amount of the player wager.

Regarding claims **20-22**, and **37** though teaching a selection process for the selection of the winning numbers (symbols) Powerball/Walker may arguable considered silent to the process of winning number selection including random selection, pseudo-

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random selection, and the random selection of objects associated with winning symbols, however the applicant admits that such features are old and well known in the art in paragraphs 2 and 3 of their specification. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to have incorporated the selection processes set forth above in the invention of Powerball/Walker in order to provide a non-biased set of winning numbers.

Regarding claim **23**, Walker teaches the inclusion of processor pseudo-random symbol selections (Walker Col 1:43-46), however is silent regarding the use of such selections for use as a winning set. It would have been obvious to one of ordinary skill in the art at the time of invention to have utilized the automated selections of Walker in the device of powerball to determine game outcome in order to avoid mechanical tampering or defect.

Regarding claims **24, 25, 39, and 40**, Walker teaches the selection of six number from a pool of forty-two (Col 2:20-23) wherein the absence of ball replacement would prevent the same symbol from being reselected. Further the occurrence of redundant numbers in his example would be inconsistent with the odds presented on line twenty-three. It would have been obvious to limit each number to a single selection and hence exclude previously selected prize numbers to maintain desired odd and or payout in the teaching of Powerball.

Regarding claims **26-29**, Walker teaches the use of "quick pick" for providing a random automated selection of player symbols (Col 1:43-46) in addition to the previously provided for player selection and ability to purchase multiple tickets. It would

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have been obvious to one of ordinary skill in the art at the time of invention to have allowed to purchase the number of tickets (sets of symbols) through either selecting the numbers manually or alternatively opting for a an automated selection to give the user the ability to blend a perceived skill game and a game of chance as they see fit.

Regarding claims **30-34**, and **42** Walker teaches the use of a networked lottery system for receiving a player's wager, receiving the player's symbol selection, and notifying the player of payout data, on remote computing device including personal and lottery terminal type devices (Walker Figures 1,7,8 and Col 5:23-25,). It would have been obvious to one of ordinary skill in the art at the time of invention to have utilized a networked computing system such as the one taught by Walker in the invention of Powerball/Walker as a the game distribution means in order to increase game availability.

Claims **13**, and **17** are rejected under 35 U.S.C. 103(a) as being unpatentable over [www.Powerball.com](http://www.Powerball.com) in view of Walker et al (US 6,497,408) in yet further view of *Frequently Asked Questions about Keno* (FAQK)

Regarding claims **13** and **17**, Powerball/Walker is silent regarding the inclusion of different symbols sized player sets however in a related teaching FAQK teaches the inclusion of various sized sets (Pages 1-2 chosen numbers). It would have been obvious to one of ordinary skill in the art at the time of invention to include various set sizes in a lotto game in order to allow for a greater number of smaller payouts.



***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Mosser whose telephone number is (571)-272-4451. The examiner can normally be reached on 8:30-4:30 Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on (571) 272-4419. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

REM

  
JESSICA HARRISON  
PRIMARY EXAMINER